

FRANCHISE REGULATION  
DEPT. OF HEALTH  
COUNTY OF ... 2001

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-01-0604- Fof-MOA  
FILED DATE - 5/3/01  
Department of Health  
By: Vicki R. Kerton  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,  
  
Petitioner,

vs.

DOH CASE NO.: 1998-14223  
DOAH CASE NO.: 00-0245  
LICENSE NO.: ME0069324

*K Johnson*

JAMES A. HALIKAS, M.D.,  
  
Respondent.

\_\_\_\_\_ /

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on March 31, 2001, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, the Board's Order on Remand, the Division of Administrative Hearings' Order on Remand, Supplemental Findings of Fact, Exceptions to the Recommended Order, and Response to Exceptions (copies of which are attached hereto as Exhibits A, B, C, D, E and F, respectively) in the above-styled cause. Petitioner was represented by Larry G. McPherson, Jr., Chief Attorney. Respondent was represented by Donald W. Weidner, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

*5/7/01 mg*

### RULINGS ON EXCEPTIONS

The Board reviewed and considered the exceptions filed by the Respondent and rejected the exceptions for the reasons set forth in the Petitioner's response.

### FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
3. There is competent substantial evidence to support the conclusions of law.

### PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be modified. Although the recommendation was made for suspension until Respondent's licensure in Minnesota is unencumbered, and the Supplemental Findings of Fact dated December 13, 2000, provided documentation demonstrating an unencumbered license in Minnesota, the Board finds a violation of Section 458.331(1)(b), Florida Statutes and imposes the following penalty.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that


1. Respondent shall pay an administrative fine in the amount of \$2,000 to the Board.

2. Prior to engaging in research with any human subjects, the Respondent must appear before the Board and obtain the Board's approval of any research project.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 17<sup>th</sup> day of April, 2001.

BOARD OF MEDICINE

  
TANYA WILLIAMS, BOARD DIRECTOR  
For  
GASTON ACOSTA-RUA, M.D.  
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE AGENCY FOR HEALTH CARE ADMINISTRATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to James A. Halikas, M.D., 783 Tramore Lane, Naples, Florida 34108; to Donald W. Weidner, Esquire, 11265 Alumni Way, Suite 201, Jacksonville, Florida 32246; to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief - Practitioner Regulation, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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**AMENDED CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to James A. Halikas, MD, 783 Tramore Lane, Naples, FI 34108, James A. Halikas, MD, 2335 N. Tamiami Trail , Suite 205, Naples, FI 34103; to Donald W. Weidner, Esq., 11265 Alumni Way, Suite 201, Jacksonville, FI 32246; to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, FI 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief - Practitioner Regulation, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOAH CASE NO. 00-0245  
AHCA CASE NO. 98-14223

JAMES A. HALIKAS, M.D.,

Respondent.

**PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS**

COMES NOW Petitioner, by and through the Agency for Health Care and its undersigned attorney, and files this Response to Respondent's Exceptions to the Recommended Order, and states:

**FINDINGS OF FACT**

1. Respondent filed exceptions to the recommended order in this case. Respondent takes exception to numerous findings of facts based upon the argument that the Administrative Law Judge did not include numerous facts presented through Respondent's testimony. Respondent also takes exception to paragraph 29 of the conclusions of law.

2. The proper standard of review for a recommended order is outlined in Section 120.57(l), Florida Statutes, which states:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state

with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

#### FINDINGS OF FACT

3. Respondent fails to assert that the Administrative Law Judge's findings of fact are not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Respondent improperly argues a *de novo* review of the finding of facts in this case, and thus, Respondent's exceptions should be rejected.

4. The proper standard of review for findings of fact as outlined in Section 120.57(1), Florida Statutes, is further defined by case law. In Helfetz v Department of Business Regulation, 475 So. 2d 1277, 1281 (1<sup>st</sup> DCA 1985), the court stated that:

[I]t is the hearing officer's function to consider all evidence presented, resolve conflicts, judgements of credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of facts based upon competent substantial evidence.

The Helfetz court also stated:

The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge

credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. Id.

5. In this case, the Administrative Law Judge's findings of fact reflect either his determination of the credibility of the some of the testimony, or the relevancy of the facts to the conclusions of law. The Administrative Law Judge either did not believe some of Respondent's testimony, or determined that Respondent's statements referenced in the exceptions were not relevant. The Administrative Law Judge weighed the evidence presented at the formal hearing, and reached the ultimate findings of facts in this case. The ultimate findings of facts in the recommended order were based upon competent, substantial evidence in the record. Thus, the Board should not independently weigh the evidence in this case as requested by Respondent. Instead, the Board should adopt the findings of fact as outlined in the recommended order.

#### CONCLUSIONS OF LAW

6. Respondent takes exception to an evidentiary ruling by the Administrative Law Judge. The Board does not have substantive jurisdiction over Chapter 90, Florida Statutes. In accordance with Section 120.57(1), Florida Statutes, the Board should not modify a conclusion of law relating to the Court's ruling on the authenticity of a document, as defined by Chapter 90, Florida Statutes.

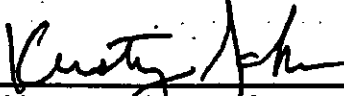
7. Moreover, although the Respondent submitted a properly authenticated document, Respondent's submission of this document was not timely. The Administrative Law Judge closed the case at the Division of Administrative Hearings before Respondent submitted the properly authenticated document. The Board should



only consider evidence that was properly admitted before the Administrative Law Judge. Thus, because the Administrative Law Judge did not consider the properly authenticated document as the basis for the recommended order, the Board should not consider this document as a basis for the final order.


WHEREFORE, Petitioner requests that the Board of Medicine deny Respondent's exceptions to the recommended order.

Respectfully submitted,

  
\_\_\_\_\_  
Kristy M. Johnson, Senior Attorney  
Florida Bar Number 144282  
Agency for Health Care Administration  
Post Office Box 14229  
Tallahassee, FL 32317-4229  
(850) 488-4451 (850) 488-7723 Fax

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail this 11<sup>th</sup> day of August, 2000, to Counsel for Respondent, Donald Weidner, Esquire, Weidner & Winicki, 11265 Alumni way, Suite 201, Jacksonville, Florida 32246.

  
\_\_\_\_\_  
Kristy M. Johnson, Senior Attorney

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PRACTITIONER REGULATION  
LEGAL

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DEPARTMENT OF HEALTH, )  
)  
Petitioner, )  
)  
v. )  
)  
JAMES A. HALIKAS, M.D. )  
)  
Respondent. )

DOAH CASE NO.: 00-0245  
DOH CASE NO.: 1998-14223

**RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER**

Respondent, JAMES A. HALIKAS, M.D., by and through undersigned counsel, pursuant to Rule 28-106.217 of the Florida Administrative Code, files these Exceptions to the Recommended Order and states as follows:

**FINDINGS OF FACT**

1. Respondent takes exception to paragraph 4 of the Recommended Order. In that paragraph, the judge correctly noted that Respondent, during his time as a professor at the University of Minnesota, was involved in chemical dependency research and participated in human research projects for the treatment of drug addiction. However, contrary to the uncontradicted testimony of Respondent, the judge fails to find that Respondent took part in over thirty research projects involving human subjects and of that number, all except one, the project which is the focus of this case, involved outpatients rather than inpatients. (T - 13).

2. Respondent takes exception to paragraph 5 of the Recommended Order wherein the judge finds that Respondent took part in a human research study involving the drug Gamma-Hydroxybutyrate ("GHB"). Contrary to the uncontradicted testimony of Respondent, the judge

failed to find that GHB is a naturally occurring substance still commonly used in Europe as a mild sedative for children before surgery. (T - 21).

3. Respondent takes exception to paragraph 8 of the Recommended Order. While Respondent was responsible for the planning and implementation of the study, the uncontradicted testimony of Respondent sets forth the very clear difference between an inpatient study, such as the one at issue in this case, and an outpatient study such as all of the other studies undertaken by Respondent. The testimony demonstrates that the difference between an outpatient and inpatient project is that in an outpatient project thirty or forty people report to Respondent as the principal investigator. (T - 15). As such, Respondent would have a great deal of control over the project and could ensure that each staff member properly fulfilled his or her responsibilities, such as obtaining written informed consents from the patients taking part in the project. (T - 15, 46). In an outpatient setting, Respondent could ensure that each patient involved in the project had provided informed consent because that patient would not even be a part of the project without such consent. (T - 15). In an inpatient study, however, each of the patients has already been admitted to the hospital. A number of personnel in an inpatient study, such as nurses and other hospital personnel, would not be under the direct control of Respondent. (T - 16).

4. Respondent takes exception to paragraphs 10 and 11 of the Recommended Order. The judge correctly notes that the informed consent documentation used in the GHB study consisted of English-text pages and that the Hmong population taking part in the GHB study could not speak or read English. However, Respondent's uncontradicted testimony is that a Hmong translator was provided to translate the informed consent documentation to the

Hmong patients. (T - 23, 26, 28, 46-47). Likewise, Respondent personally obtained verbal informed consent from each participant in the study. (T- 26-27, 54). Respondent met personally with those patients taking part in the GHB study almost daily along with an interpreter to discuss the GHB with them and to let them know that they could ask for GHB or not ask for GHB as part of their treatment as the drug was meant merely as a supplement to their opiate withdrawal regimen. (T - 26-27, 54). As such, verbal consent was given by these patients to be part of this study virtually everyday of its existence. (T - 26-27, 54).

5. Respondent takes exception to paragraph 13 of the Recommended Order. Informed consent was not obtained from all of the human test subjects in the GHB study. However, Respondent's uncontradicted testimony is that once Respondent discovered the written informed consents had not been obtained from certain of the patients, he met with them along with an interpreter and discussed the informed consent line by line with the patients. (P's Ex. 2 at 8; T - 25-26, 28-29, 54). Four of the Hmong patients signed the consent form which was co-signed by the interpreter. (T - 26). Of those four, three had already received GHB, but one had not even received the substance as of that time. (T - 26).

6. Respondent takes exception to paragraph 14 of the Recommended Order in that the judge states the University of Minnesota "apparently became aware of the informed consent issue" in August of 1993. Respondent's uncontradicted testimony is that he personally informed his department chair of the problem and that she asked him to discontinue the study. (P's Ex. 2 at 8; T - 29).

7. Respondent takes exception to paragraph 16 of the Recommended Order. Although the University did find that certain procedural safeguards were not observed in the

GHB study, Respondent's uncontradicted testimony is that the patients were never in any danger and did not experience any untoward effects from receiving the GHB. (T - 28, 42, 53). Since this was an inpatient study and each of the patients had been admitted to the hospital, they all received twenty-four hour nursing care in addition to being followed by Respondent, their own resident physicians as well as the chemical dependency fellow (T - 26, 33, 53).

#### CONCLUSIONS OF LAW

8. Respondent takes exception to paragraph 29 of the Recommended Order. In that paragraph, the judge noted that, although he granted Respondent leave to file an exhibit evidencing that all restrictions had been removed from Respondent's license to practice in Minnesota, the exhibit subsequently filed by Respondent was not properly authenticated, was hearsay, and was not relied upon in the preparation of the Recommended Order.

9. On May 9, 2000, Respondent filed a Motion to Reopen Administrative Hearing Record based upon the fact that the Complaint Review Committee of the Minnesota Board of Medical Practice recommended that the full board approve an Order of Unconditional License for Respondent at its May 13, 2000 meeting.

10. Respondent requested that the record be reopened so that he could present evidence of the Minnesota Board of Medical Practice's final decision. Prior to the judge's ruling on that motion, Respondent received confirmation that all restrictions had been removed from his license to practice medicine in Minnesota by the Minnesota Board of Medical Practice. Accordingly, Respondent tendered the Order of Unconditional License issued by the Minnesota Board of Medical Practice for consideration by the judge in determining whether to grant

Respondent's Motion to Reopen the Administrative Record.

11. Subsequently, on May 25, 2000, the judge granted Respondent's Motion to Reopen the Administrative Record as to Paragraph Seven only, which referred to Respondent's request to reopen the administrative record so that Respondent could notify and present evidence to the Court of the Minnesota Board of Medical Practice's decision with regard to the removal of all restrictions on Respondent's license to practice medicine.

12. As the Order of Unconditional License originally filed by Respondent was not authenticated, Respondent sought and received a certified copy of that Order which he filed with the Division of Administrative Hearings ("DOAH") on July 20, 2000, the same day the judge filed the Recommended Order.

13. Pursuant to §90.902(4) of the Florida Evidence Code, extrinsic evidence of authenticity is not required for a "copy of an official public record... certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsections (1), (2), or (3)" of §90.902, Fla. Stat. Those subsections require that the document either contain a seal from, in this case, the State of Minnesota or the signature of the document's custodian. *Id.*

14. The certified copy of the Order of Unconditional License filed by Respondent contains both a signature from Robert A. Leach, the document's custodian, certifying that the Order of Unconditional License is a copy of the official record, as well as a seal from the State of Minnesota. As such, according to the Florida Evidence Code, the document filed with DOAH was self-authenticated and, because the judge previously ruled that he would admit the exhibit, should have been relied upon by the judge in drawing his conclusions at law.

15. Therefore, the judge's refusal to rely on the Order of Unconditional License in the preparation of the Recommended Order is not supported by the hearing record.

16. Respondent also wishes to point out a scrivener's error in paragraph 28 of the Recommended Order wherein reference is made to §348.331(1)(b), Fla. Stat. The context of the paragraph indicates that the cite should be to §458.331(1)(b), Fla. Stat.

WHEREFORE, Respondent requests that the Board of Medicine reject the Findings of Fact in paragraphs 4, 5, 8, 10, 11, 13, 14, and 16, the Conclusion of Law set forth in paragraph 29 of the Recommended Order and find that Respondent has presented evidence as to the removal of all restrictions on his license to practice medicine in Minnesota and enter a penalty consistent with that conclusion.

Respectfully submitted this 2<sup>nd</sup> day of August, 2000.

DONALD W. WEIDNER, P.A.



\_\_\_\_\_  
DONALD W. WEIDNER, ESQ.  
Florida Bar No. 185200  
G. THOMAS BOWDEN, II, ESQ.  
Florida Bar No. 110698  
11265 Alumni Way, Suite 201  
Jacksonville, Florida 32246-6685  
(904) 641-0004  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was furnished by to Kristy M. Johnson, Esq., Agency for Health Care Administration, P.O. Box 14229, Tallahassee, Florida 32317-4229 by U.S. Mail this 2 day of July, 2000.



DONALD W. WEIDNER, ESQ.



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PRACTITIONER REGULATION  
LEGAL

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DEPARTMENT OF HEALTH,  
BOARD OF MEDICINE,

Petitioner,

vs.

JAMES ANASTASIO HALIKAS, M.D.

Respondent.

Case No. 00-0245

RECOMMENDED ORDER

On April 17, 2000, a formal administrative hearing in this case was held in Naples, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kristy M. Johnson, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive  
Post Office Box 14229  
Tallahassee, Florida 32317-4229

For Respondent: Donald W. Weidner, Esquire  
G. Thomas Bowden, II, Esquire  
Donald W. Weidner, P.A.  
11265 Alumni Way, Suite 201  
Jacksonville, Florida 32246

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations of the Administrative Complaint filed by the Petitioner are correct and, if so, what penalty should be imposed against the Respondent.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 24, 1999, the Department of Health, Board of Medicine (Petitioner), alleged that James Anastasio Halikas, M.D. (Respondent) violated Section

458.331(1)(b), Florida Statutes. The Respondent requested a formal hearing. The Department forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner had Exhibits numbered 1-2 admitted into evidence. The Respondent testified on his own behalf and had Exhibit numbered 1 admitted into evidence. Subsequent to the hearing, the Respondent was granted leave to file an additional exhibit. The late-filed exhibit was not properly authenticated and is hereby rejected. A Transcript of the hearing was filed on April 25, 2000. Both parties filed Proposed Recommended Orders.

#### FINDINGS OF FACT

1. Beginning on October 3, 1995, and at all times material to this case, the Respondent has been licensed as a medical doctor in the State of Florida, holding license number ME 69324.

2. At all times material to this case, the Respondent was also a licensed medical doctor in Minnesota.

3. From 1984 to 1998, the Respondent was employed as a professor at the University of Minnesota (University).

4. As a University professor, the Respondent was involved in chemical dependency research and participated in human research projects intended to treat drug addictions.

5. Beginning in June 1993, the Respondent conducted a study wherein Gamma-Hydroxybutrate (GHB) was provided to human test participants.

6. The Respondent was the principal investigator in the study. He personally applied to and received permission from the U.S. Food and Drug Administration (FDA) to conduct the study.

7. The human participants in the 1993 GHB study were primarily a group of Southeast Asians known as "Nmong" who exhibit high rates of opium addiction. The purpose of the study was to determine whether GHB could be beneficial in detoxification from opium addiction.

8. As the principal investigator, the Respondent was responsible for planning and implementation of the study.

9. Obtaining the "informed consent" of study participants was a requirement of the University's standard protocol, and is a standard requirement for any human research project

10. The informed consent documentation used in the Respondent's GHB study consisted of five English-text pages.

11. The participants in the GHB study were essentially unable to speak or read English.

12. The Respondent assumed that the University hospital, where the study was conducted, would obtain the appropriate informed consent from participants.

13. By the time the GHB study began, informed consent had not been obtained from all the human test subjects.

14. The University apparently became aware of the informed consent issue, and asked the Respondent on August 4, 1993 to discontinue the test.

15. The Respondent terminated the test on August 5, 1993.

16. After the test was terminated, the University reviewed the test's procedures and determined that in addition to the informed consent issue, test administrators had failed in some cases to follow dosing protocol limits, and had also failed to provide a substitute drug (methadone) to study participants who sought the substitution.

17. Based on the improper implementation of the study, the University took disciplinary action against the Respondent including a reprimand, restrictions against conducting research involving university hospital patients, and imposition of a two-year monitoring period of the Respondent's clinical performance.

18. Based on the University action, the Minnesota Board of Medical Practice reviewed the situation. The Board is the licensing authority for physicians in the State of Minnesota.

19. By Order dated May 9, 1998, the Respondent entered into a stipulation and order with the Minnesota Board of Medical Practice. The stipulation and order required as follows:

- a) provide proof of compliance with requirements imposed by the University of Minnesota;
- b) notify the Minnesota Board of Medical Practice if Respondent participated in human research studies for a period of two (2) years;
- c. obtain a supervising physician, meet with the supervising physician monthly, and provide the supervising physician with information pertaining to Respondent's clinical practice outside the scope of his teaching responsibilities;
- d) meet with a designated member of the Minnesota Board of Medical Practice quarterly to review Respondent's progress under the terms of the order; and
- c) pay a civil penalty in the amount of \$3,500.

20. Although the Respondent did not have a private clinical practice in Minnesota, he had a limited number of clinical patients at a VA hospital in Minnesota who were outside his teaching responsibilities. In accordance with the terms of the settlement and order, the Respondent obtained a supervising physician who apparently oversaw the clinical practice.

21. In September 1998, the Respondent moved to Florida and began a private clinical practice.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

23. The Department of Health, Board of Medicine, is responsible for disciplinary proceedings against licensed physicians in Florida. Chapter 458, Florida Statutes.

24. The Department has the burden of proving the allegations against the Respondent by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). In this case, the burden has been met.

25. Section 458.331, Florida Statutes, sets forth grounds for disciplinary action against licensed physicians in Florida. Section 458.331(1)(b), Florida Statutes, provides that the Board of Medicine may discipline the license of a physician for the following reason:

Having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's

acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license; shall be construed as action against the physician's license.

26. In this case, the evidence establishes that action was taken against the Respondent's licensure as a physician in Minnesota by the state's Board of Medical Practice.

27. Section 458.331 (2), Florida Statutes, provides as follows:

- (2) When the board finds any person guilty of any of the grounds set forth in subsection (1), including conduct that would constitute a substantial violation of subsection (1) which occurred prior to licensure, it may enter an order imposing one or more of the following penalties:
  - (a) Refusal to certify, or certification with restrictions, to the department an application for licensure, certification, or registration.
  - (b) Revocation or suspension of a license.
  - (c) Restriction of practice.
  - (d) Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense.
  - (e) Issuance of a reprimand.
  - (f) Placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another physician.
  - (g) Issuance of a letter of concern.
  - (h) Corrective action.
  - (i) Refund of fees billed to and collected from the patient.
  - (j) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to

compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the physician. All costs associated with compliance with orders issued under this subsection are the obligation of the physician.

28. Rule 64B8-8.001, Florida Administrative Code, provides a range of disciplinary guidelines for use by the Board of Medicine in imposing discipline for various statutory violations. Rule 64B8-8.001(2)(b), Florida Administrative Code, states that violation of Section 348.331(1)(b), Florida Statutes, can result in "imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to suspension or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from \$1,000.00 to \$5,000.00."

29. Subsequent to the hearing, the Respondent was granted leave to file an exhibit which appears to be a document from the Minnesota Board of Medical Practice that removes the restrictions against the Respondent's practice. The exhibit filed by the Respondent is not properly authenticated, is hearsay, and has not been relied upon in the preparation of this Recommended Order.


30. The Petitioner asserts that the purpose of the Respondent's move to Florida was to escape from restrictions placed on his clinical practice in Minnesota. The Respondent asserts that the purpose of the move was to follow his wife, who moved to Florida to escape the Minnesota winters. There is no

credible evidence that the Respondent's move impacted any restrictions placed against his licensure in Minnesota.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Petitioner enter a final order imposing a suspension of the Respondent's Florida licensure until the Respondent's Minnesota license is unencumbered.

DONE AND ENTERED this 20<sup>th</sup> day of July, 2000, in Tallahassee, Leon County, Florida.

  
WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20<sup>th</sup> day of July, 2000.

COPIES FURNISHED:

Angela T. Hall, Agency Clerk  
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Tallahassee, Florida 32399-1701

William W. Large, General Counsel  
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11265 Alumni Way, Suite 201  
Jacksonville, Florida 32246

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via:  
 postage- paid U.S. Mail,  Hand-Delivery,  E-mail and /or  Facsimile Transmission to  
Donald W. Weidner, Esquire, 11265 Alumni Way, Suite 201, Jacksonville, Florida 32246 on  
February 14, 2001.

  
\_\_\_\_\_  
Kristy M. Johnson, Senior Attorney

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, )

PETITIONER, )

v. )

JAMES ANASTASIO HALIKAS, M.D., )

RESPONDENT. )

CASE NO. 1998-14223

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against James Anastasio Halikas, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 0069324. Respondent's last known address is 2334 North Tamiami Trail, Suite 205, Naples, Florida, 34103.

3. Respondent also holds a license to practice medicine in the state of Minnesota.

4. On or about May 9, 1998, Respondent entered into a stipulated order with the Minnesota Board of Medical Practice, the licensing authority in the state of Minnesota. In this stipulated order, the Minnesota Board of Medical Practice reprimanded and restricted Respondent's Minnesota medical license based upon charges of deficiencies in a human research study which Respondent was supervising.

5. On or about May 18, 1998, Respondent's attorney notified the Florida Board of Medicine of the Minnesota action against the Respondent's medical license.

6. Respondent had a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, in that Respondent entered into a stipulated order with the state of Minnesota. In this stipulated order, the Minnesota Board of Medical Practice reprimanded and restricted Respondent's medical license based upon charges of deficiencies in a human research study which Respondent was supervising.

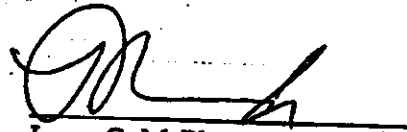
7. Based on the foregoing, Respondent violated Section 458.331(1)(b), Florida Statutes, by having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of the

Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case as provided for in Section 455.624(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 24 day of August, 1999.

Robert G. Brooks, M.D., Secretary



Larry G. McPherson, Jr.  
Chief Medical Attorney

**COUNSEL FOR DEPARTMENT:**

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KMJ  
PCP: August 20, 1999  
PCP Members: Winchester, Cerda, Pardue

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK *Stephanie Q. Dism*  
DATE 8/26/99